IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:-

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

WEDNESDAY, THE 7TH MARCH 2007 / 16TH PHALGUNA 1928

F.A.O.No.87 of 2007

AGAINST THE ORDER DATED 20/02/2007 IN I.A.163/07 IN O.S.33/2006 OF THE COURT OF THE SUBORDINATE JUDGE, KOYILANDY.

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APPELLANTS: RESPONDENTS 2 TO 4 IN I.A./DEFENDANTS 2 TO 4 IN O.S.:-

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1. SULOCHANA, W/O LATE DAMODARAN NAIR,
   AGED ABOUT 47 YEARS, SISIRAM, CHEMANCHERRY AMSOM,
   DESOM, KOYILANDY TALUK.

2. KAVITHA, D/O LATE DAMODARAN NAIR,
   AGED 25 YEARS, SISIRAM, CHEMANCHERRY AMSOM,DESOM,
   KOYILANDY TALUK.

3. SARATH, S/O LATE DAMODARAN NAIR,
   AGED 23 YEARS, SISIRAM, CHEMANCHERRY AMSOM,DESOM,
   KOYILANDY TALUK.

BY ADV. SRI.N.L.KRISHNAMOORTHY
SRI.K.LAKSHMINARAYANAN
SMT.SATHYA SHREEPRIYA

RESPONDENTS: PETITIONERS & 1ST RESPONDENT IN I.A./
PLAINTIFFS & 1ST DEFENDANT O.S.:-

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1. GANGADHARAN NAIR, S/O LATE MALU AMMA,
   AGED 60 YEARS, THACHANADATH, CHEMANCHERRY AMSOM,
   DESOM, KOYILANDY TALUK.

2. UNNIKRISHNAN, S/O LATE MALU AMMA,
   AGED 56 YEARS, THACHANADATH AMBADI,
   CHEMANCHERRY AMSOM, DESOM, KOYILANDY TALUK.

3. SOMAN, S/O LATE MALU AMMA,
   AGED 47 YEARS, KRISHNAKALA,CHEMANCHERRY AMSOM,
   DESOM, KOYILANDY TALUK.

THIS FIRST APPEAL FROM ORDERS HAVING COME UP FOR ADMISSION 07/03/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:-

K.Padmanabhan Nair,J.

F.A.O.No.87 of 2007

Dated, this the 7th day of March, 2007

JUDGMENT

Defendants 2 to 4 in O.S.No.33 of 2006 on the file of Subordinate Judge's Court, Koyilandy are the appellants in this First Appeal from Order. Respondents 1 and 2 filed a suit for partition. In the suit, they filed an injunction application for an order of temporary injunction restraining the defendants from committing any act of waste and from making any alteration to the building situated in the suit property. The appellants claimed absolute title over the building under a Will and contended that they had a right to make alterations. The Court below found that since the genuineness of the Will is under challenge, it is not just and proper to allow the appellants to commit any act of waste to the house situated in the plaint 'A' schedule property and make any alteration to the said house and in the interest of the appellant also, the building is to be protected by such an order. Accordingly, the trial Court granted temporary injunction. Challenging that order, this appeal is filed.

2. The learned counsel appearing for the appellants submits that the building is leaking and the appellants wanted to make some repairs and maintenance. Unless that is carried out immediately, substantial damage will be caused to the building in the ensuing monsoon season. The learned counsel appearing for the appellants has also stated that the building situated in the property is an old one with a concrete roof with two bed rooms and during rainy reason, the building is leaking. It is contended that in order to avoid leaking, they have decided to construct upstair portion. It is submitted that the appellants had constructed the walls, etc. and more than half of the construction work is already over. It is argued that the plaintiffs were aware of the work from the very beginning, but did not raise any objection when the work started. It is argued that the suit and the injunction petition were filed without any bona fides. It is submitted that if the unfinished building portion is allowed to remain as such, the appellants will sustain heavy damages and it is only with the intention of compelling the appellants for a compromise that the suit and injunction petition were filed. It is submitted that the appellants will not claim any compensation for

the newly constructed building portion or special right in respect of the building and they may be allowed to put up at least a roof over the constructed portion. It is open to the appellants to approach the trial court, make such a request and if such a request is made, the trial Court shall consider and dispose of the same in accordance with law after hearing the plaintiffs also.

The appeal is disposed of with the above observation.

I.A.No.919 of 2007 shall stand dismissed.

I.A.No.920 of 2007 perused and closed.

K.Padmanabhan Nair
Judge

vku/-